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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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the firm, or laches and acquiescence amounting to authority. *Jamestown Banking Co. v. C.*, 14Atl(2d)(Pa)325.

7396. Partnership bound by partner's wrongful act.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. *Kangas v. W.*, 291NW292. See Dun. Dig. 5834a.

7399. Partner by estoppel.

One having reasonable cause to believe that no change had occurred in the personnel of the firm, and deals accordingly, may sue one who claims previous separation from the partnership. *Tallent v. F.*, 141SW(2d)(Tenn) 485.

7400. Liability of incoming partner.

Provision does not preclude reaching partner's personal assets to satisfy his liability on a partnership lease upon which he has received benefit of years of occupancy. *Ellingson v. W.*, 104Pac(2d)(Cal)507.

PART V

PROPERTY RIGHTS OF A PARTNER

7407. Extent of property rights of a partner.

Where partnership acquires land solely for purpose of speculation and it is not contemplated that there shall be any conveyances between the parties, equity regards it as personal property among partners and agreement of one partner to release his interest is not a contract for such an interest in lands as comes within statute of frauds. *Smith v. G.*, 144SW(2d)(TennApp)702.

7408. Nature of a partner's right in specific partnership property.

In action by passengers in truck owned by partnership and negligently driven by one of partners on a personal mission, surviving partner is liable where he consented to personal use of vehicle. *Kangas v. W.*, 291NW292. See Dun. Dig. 7370.

CHAPTER 58
Corporations

GENERAL PROVISIONS

7429. Existing corporations continued.

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. *Op. Atty. Gen.* (92a-9), Jan. 18, 1940.

7447. General powers.

E. Albrecht & Son v. L., (DC-Minn), 27FSupp65. Rev'd on other grounds, (CCA3), 114F(2d)202.

Existence and extent of right of members of a corporation to control actions of corporate officers or agents is determined by law of state of incorporation. *Farmers Educational, Etc., v. F.*, 289NW884. See Dun. Dig. 2185.

Where act complained of affects plaintiff solely in his capacity, as a member, and is act of corporation, or through its agents, then such action is management of internal affairs of corporation, and, in case of a foreign corporation, our courts will not as a general rule take jurisdiction. *Id.* See Dun. Dig. 2185.

In suit by local division of foreign corporation to enjoin cancellation of charter of local division, defendant by general appearance and prayer for general and affirmative relief gave court jurisdiction of the subject matter. *Id.* See Dun. Dig. 2185.

7453. By-laws, how adopted.

Power to amend by-laws resides in stockholders and cannot be delegated to board of directors. *Op. Atty. Gen.* (27a-13), Aug. 14, 1940.

7455. Duration of corporate existence—Renewal.

Act Feb. 25, 1941, c. 20, authorizes co-operative companies and associations to renew their corporate existence, and validates certain such proceedings.

Laws 1941, c. 102, authorizes renewal of the corporate existence of certain corporations created under General Statutes of 1894, c. 34, Title 3, whose duration expired less than 21 years prior to passage of such act.

Act Mar. 28, 1941, c. 104, authorizes renewal of corporate existence of social, charitable, or fraternal corporations.

Act Apr. 9, 1941, c. 127, §1, legalizes proceedings to renew corporate existence of any private corporation organized under laws of state, etc.

Act Apr. 10, 1941, c. 167, provides for completion of certain proceedings to renew corporate existence, and validates certain corporate acts and contracts of corporations taking steps to renew their corporate existence.

Notes of Decisions

This is the only statute under which a county agricultural society may renew its corporate life. *Op. Atty. Gen.*, (772a-5), Dec. 19, 1939.

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. *Op. Atty. Gen.* (92a-9), Jan. 18, 1940.

A chamber of commerce does not have a perpetual corporate existence. *Op. Atty. Gen.* (92a-9), Nov. 9, 1940.

7457-9. Corporate existence of cooperative associations renewed.

Renewal of corporate existence of certain co-operative corporations and validating acts and contracts of corporations taking steps to renew such corporate existence. Act Apr. 10, c. 166, §§1, 2.

7458. Election of board of directors.—The business of every such corporation, except savings banks, shall be managed by a board of at least three directors, elected by ballot by and from the stockholders or members; provided, however, that when the certificate of incorporation or the by-laws so provides, a vacancy in the board of directors may be filled by the remaining directors; provided, however, that not more than one-third of the members of the board may be so filled in any one year; that of savings banks, by a board of at least seven trustees, residents of the county of its location, each of whom, before being authorized to act, shall file a written acceptance of the trust. A majority of the directors or trustees shall constitute a quorum for the transaction of business. Any action which might be taken at a meeting of the board of directors, trustees or managers may be taken without a meeting if done in writing signed by all of the directors, trustees or managers. (As amended Apr. 9, 1941, c. 148, §1.)

7470. Record of stock—Reports—Dividends.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. *Op. Atty. Gen.* (29a-15), Nov. 13, 1940.

7472. Amendments to Certificates of Incorporation.

County agricultural associations formed under §7885 may amend their articles of incorporation under this section. *Op. Atty. Gen.* (772a-5), March 8, 1940.

Resolution of amendment should be adopted by a majority vote of members of an athletic club. *Op. Atty. Gen.* (92a-1), May 31, 1940.

7475-1. County agricultural societies may renew corporate existence.

Act Apr. 9, 1941, c. 147, §2, authorizes certain county agricultural societies to renew their corporate existence, and validates certain corporate acts and contracts of societies taking steps to renew their corporate existence.

7484. Dissolution of corporations.

A county agricultural society may be dissolved only upon affirmative vote of majority of voting stock or members. *Op. Atty. Gen.*, (772a-5), Dec. 19, 1939.

7486. Extension of time for closing affairs, etc.

Time for closing affairs and disposing of property of certain corporations, not including those having power of eminent domain, whose existence has been terminated, is extended for two years. Laws 1941, c. 128.

7489. Diversion of corporate property.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. *Op. Atty. Gen.* (29a-15), Nov. 13, 1940.

7492. Examination by attorney general, etc.

(f). One who has entered into a contract with another acting as a corporation cannot question corporate character of "corporation". *State v. Rivers*, 287NW790. See Dun. Dig. 1983.

MINNESOTA BUSINESS CORPORATION ACT**7492-3. Articles of incorporation.**

Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

7492-8. Powers common to corporations.

Where copartnership conveyed all of assets to a non-functioning corporation acquired by copartners, and later under name of another corporation of the copartners executed a lease of oil station and contract containing an agreement to pay indebtedness of copartners to lessee, any formal declarations of policy which corporation may have made in its attempt to disclaim liability cannot prevail in face of contractual admission. *Range Ice & Fuel Co. v. E.*, 296NW407. See Dun. Dig. 2016.

7492-13. Shares; filing certain resolutions; options and conversion rights.

Shareholder has a property interest in corporation irrespective of issuance of certificate. *Wackerbarth v. W.*, 292NW214. See Dun. Dig. 2029.

7492-14. Shares—Allotment and consideration; etc.

Issuance or payment to a promoter of stock or property of a corporation for organization services held prohibited by New York Stock Corporation Law, and stock so illegally issued may be canceled. *Winston v. S.*, 21NYS (2d)841.

7492-26. Voting trusts.

Voting trusts currently observed. 24MinnLawRev347.

7492-27. Directors.

Record sustains finding that directors transferred their secret profits voluntarily to their corporation. *Risvold v. G.*, 292NW103. See Dun. Dig., 2096.

7492-29. Officers and agents.

A proposed written contract, employing agent to sell all property of corporation, upon specified commission and expense money, which stockholders at a meeting authorized and directed its officers to execute, and which was duly executed, may not be modified as to compensation by oral agreement between president and general manager of corporation, not authorized so to do by either stockholders or board of directors. *Foley v. W.*, 291NW 903. See Dun. Dig. 2114.

Expedient of adopting a corporate business structure, having same name, property, and purposes as a former partnership or individual, will not be effective to purge organizers in their corporate capacity of indebtedness previously incurred in some other capacity, and doctrine applies although corporation was not organized but acquired by purchase. *Range Ice & Fuel Co. v. E.*, 296 NW407. See Dun. Dig. 1977.

7492-30. Relation of directors and officers to corporation.

In action against directors taking stock in another corporation as a secret profit, evidence sustains finding as to value of stock. *Risvold v. G.*, 292NW103. See Dun. Dig. 2096.

Corporation, not having sought rescission and having recovered secret profits made by its directors, may not mulct person dealing with directors and his non-director associates of their remaining interest in property which was open and apparent on face of contract made with corporation. *Id.* See Dun. Dig. 2096.

Where corporation purchased a divided interest in gold mine and it was later discovered that officers and directors also received an interest in the mine in nature of a commission, corporation was under necessity either of affirming or of rescinding entire transaction, but having affirmed was entitled to everything purchased with its money, including interest transferred by seller to officers. *Risvold v. G.*, 296NW411. See Dun. Dig. 2103.

Where a person in a fiduciary relation to another acquires property, and acquisition or retention of property is in violation of his duty as fiduciary, he holds it upon a constructive trust for the other, and directors and officers of a corporation are fiduciaries. *Id.* See Dun. Dig. 2113.

Where officers and directors of a corporation participate in purchase by corporation of an undivided interest in a gold mine and later secretly receive from seller an interest in gold mine in nature of a commission, they hold their interest for benefit of corporation under doctrine of constructive trust. *Id.* See Dun. Dig. 2113.

Where directors of corporation have clandestinely sold their own property to corporation, they are not liable as for secret profits, but may be held as for "fraud or excessive price," in which case measure of damages is difference between price paid by the corporation and fair value of property. *Id.* See Dun. Dig. 2096.

Under Uniform Fiduciaries Act, §5, one selling land to an individual and accepting in payment a check of a corporation, by such individual as its president, held liable to the corporation for the money received on such check. *LaVecchia v. N.*, 9SE(2d)(NC)489.

7492-47a. Time extended for closing affairs of certain corporations—Process.—When any corporation, other than a corporation having the power of emi-

nent domain, whose existence was terminated on or before July 1, 1939, by forfeiture or by expiration of its period of duration as fixed by its charter or otherwise, did not or shall not fully close its affairs and convey all of its property within the period of three years succeeding the date of such termination, and when such corporation has or claims or appears to have or claim any interest in or to any property, the time limit for so closing its affairs and disposing of its property is hereby extended for two years after the passage of this act for the purpose of permitting the corporation to close its affairs and dispose of its property, and the extension hereby made shall also apply for the purpose of authorizing and permitting service of process in actions at law or in equity in order that the corporation may prosecute and defend actions and be served with process therein. (Act Apr. 9, 1941, c. 128, §1.)

7492-47b. Transfer.—The corporation during such two year period when authorized by a majority vote of its board of directors and the written consent of the holders of a majority of the shares of stock of the company, issued and outstanding, having voting power, may transfer and convey all or any part of its property to a trustee or trustees with power of sale in trust for the benefit of all of the stockholders of the corporation. (Act Apr. 9, 1941, c. 128, §2.)

7492-47c. Transfers made on or before two years after passage of act legalized.—Any and all transfers and conveyances of property by the corporation and the service of process by or against the corporation, made or done after the date of termination of its corporate existence and on or before two years after the passage of this act, are hereby legalized and made of the same force and effect as if the same had been made or done within three years after the date of termination of its corporate existence. (Act Apr. 9, 1941, c. 128, §3.)

7492-47d. Pending proceedings.—This act shall not affect any action or proceeding now pending. (Act Apr. 9, 1941, c. 128, §4.)

7492-69. Certain corporations legalized and acts validated.

Laws 1941, c. 127, legalizes and validates the renewal of corporate existence of private corporations in certain cases.

UNIFORM STOCK TRANSFER ACT**7492-71. How title to certificates and shares may be transferred.**

Read v. Penn. Co. for Ins., Etc., 12Atl(2d)(Pa)925. Federal court in refusing to follow construction by state intermediate court of Ohio Uniform Stock Transfer Act failed to apply the state law as required by 28:725, Mason's U. S. Code Annotated, in absence of persuasive data that highest court of state would decide otherwise than did intermediate court, and especially where such highest court had refused to review such intermediate court's decision. *West v. A.*, 311US223, 61SCR179, rev'g (CCA6), 108F(2d)347.

In action to recover corporate stock or value thereof on ground that it had been obtained from plaintiff by means of fraud, evidence held not to show fraud. *Eckberg v. T.*, 292NW19. See Dun. Dig. 8539.

Shares of corporate stock are personal property in the form of a property interest in the corporation, and are subject of attachment, garnishment, and levy of execution. *Wackerbarth v. W.*, 292NW214. See Dun. Dig. 2027.

Uniform stock transfer act was not involved in an action involving right to garnish corporate stock, certificate for which was never issued. *Id.* See Dun. Dig. 2044.

Provisions that title to stock passes only upon delivery of certificate, did not apply to a case where owner of stock executed and delivered a trust instrument containing words of present assignment, with intent to pass title to trustees, without delivering certificate. *Home for Destitute Crippled Children v. E.*, 31NE(2d)(IllApp)812.

Requirement of code that incorporeal things should be transferred by authentic act is superseded by the Uniform Stock Transfer Act, but provision with respect to manual gifts is not affected. *LeBlanc v. V.*, 198So(La) 398.

Shares created in a state which has adopted Uniform Stock Transfer Act with its provision that title to a share can be transferred only by delivery of the certificate may be transferred by delivery of certificate as provided by Act of that state even though delivery takes

place in another state where such Act is not in force. *Morson v. S.*, 29NE(2d)(Mass)19.

Uniform Stock Transfer Act provision for transfer of full legal title by delivery and endorsement does not apply to co-operative banks in Massachusetts in view of statute providing for transfer of shares of co-operative banks only on books of corporation, and transfer of certificates gives only an equitable title and does not give legal title sufficient to allow recovery in action for conversion of stock. *Lane v. V.*, 30NE(2d)(Mass)821.

Creditors of corporation are presumed to know terms of uniform stock transfer act provision which permits valid transfer of stock without having it registered upon books of company, and therefore are charged with knowledge that stock register does not always represent true ownership of stock. *Murfrey, Blossom & Co. v. S.*, 31NE(2d)(OhioApp)134.

In Ohio there is no law which requires transfer on books of corporation as prerequisite to transfer of ownership of stock, since passage of uniform stock transfer act. *Id.*

Where written power of attorney provided that power should be revoked automatically by death, sale of stock pursuant to such power was valid where third party did not know of death of owner of stock. *Young v. W.*, 31NE(2d)(OhioApp)728.

7492-73. Corporation not forbidden to treat registered holder as owner.

Liquidating committee of bank could sue to recover dividend paid to pledgor of stock to bank as security for loan, though bank had assigned the note and pledge to the Reconstruction Finance Corporation as security for loan to bank, in view of this section. *Morrison v. G.*, 196So(Miss)247.

7492-76. Indorsement effectual in spite of fraud; etc.

Read v. Penn. Co. for Ins., Etc., 12Atl(2d)(Pa)925.
Act is all-inclusive and admits of no exceptions, even in case of theft or felonious taking from owner, affecting right of a good faith purchaser. *People v. Depositors State Bank*, 28NE(2d)(Ill)825.

7492-88. Rule for cases not provided for by this act.

Adjudication of bankruptcy of stockholder of bank followed by appointment and qualification of a trustee in bankruptcy terminates bankrupt's ownership of bank stock as of date of the adjudication where such stock is not exempt property. *State v. Arrowhead Investments*, 28NE(2d)(Ohio)797.

FOREIGN CORPORATIONS

7493. Affidavit to state street number address of agent—Etc. [Repealed.]

Repealed. Laws 1935, c. 200, §§27 and 30.
When a foreign social and charitable corporation pursues within our limits purposes for which it is organized, it is doing business in Minnesota, and amenable to process here, and chief local officer, appointed by and responsible to foreign corporation, is a proper person to serve as agent of the corporation. *High v. S.*, 289NW519. See Dun. Dig. 7814.

7494. Licenses required—Filing copy of articles of incorporation and statements—Etc. [Repealed.]

Repealed. Laws 1935, c. 200, §§27, 30.
Departure of foreign corporation from Minnesota, subsequent absence therefrom and residence elsewhere, held to have tolled Minnesota Statute of Limitations with respect to action against such corporation. *City Co. of New York v. S.* (CCA8), 110F(2d)601, aff'g (DC-Minn), 25FSupp948; *Chase Securities Corp. v. V.* (CCA8), 110F(2d)607.

Running of limitations is not tolled by departure of foreign corporation from state so long as there is a process agent in state. *Pomeroy v. N.*, 296NW513. See Dun. Dig. 5610.

7495-3. Foreign corporations not to do banking business.—No foreign corporation shall transact in this state the business which only a bank, trust company or building and loan association may transact in this state; provided, however, that any such foreign corporation may apply for, in the manner hereinafter set forth, and obtain a certificate of authority to transact in this state the business of making real estate loans. (As amended Apr. 9, 1941, c. 164, §1.)

7495-8. Same powers as domestic corporation.

A corporation organized under laws of Maine and licensed to do business in Missouri and Minnesota may not obtain a reciprocity permit for motor vehicles registered under laws of Missouri. *Op. Atty. Gen.* (632C), Dec. 10, 1940.

7495-13. Service of process.

Running of limitations is not tolled by departure of foreign corporation from state so long as there is a proc-

ess agent in state. *Pomeroy v. N.*, 296NW513. See Dun. Dig. 5610.

7495-20. Foreign corporations may not maintain action unless licensed.

Fact that a foreign corporation, party to an action, has not been licensed to do business in state is, as against it, a defense to be affirmatively pleaded and may not be taken advantage of by motion to dismiss not made until the trial. *Risvold v. G.*, 296NW411. See Dun. Dig. 2188.

RAILROAD CORPORATIONS

7526. Power to acquire property.

Pike Rapids Power Co. v. M. (CCA8), 99F(2d)902. Cert. den., 59SCR362, 488. *Reh. den.*, 59SCR487. Judgment conforming to mandate aff'd, 106F(2d)891.

7535. Right of eminent domain in certain cases.

No state officer or employee has authority to give a right of way easement to any corporation, cooperative, or person over state hospital property. *Op. Atty. Gen.* (700a-3), Oct. 24, 1939.

7536. Use of public roads—Restriction.

In death action against power company involving electrocution and wherein defendant had burden of proof on issue of contributory negligence, it is difficult to understand how presumption of due care in favor of a decedent would operate in favor of plaintiff. *Peterson v. M.*, 288NW588. See Dun. Dig. 2616.

Plaintiff's decedent, killed by electrocution, was guilty of negligence as a matter of law in manner he cut down a tree which either struck or came within immediate area of high tension power line maintained by defendant. *Id.* See Dun. Dig. 2996.

All persons are held to have a certain minimum of knowledge, including scientific facts commonly known in community, and danger of electricity is so widely known and appreciated that all persons are deemed by law to have knowledge of its deadly potentialities. *Id.* See Dun. Dig. 2996.

In case involving electrocution of employee by defendant's uninsulated electric wire, where recovery is sought by employer's insurer, as subrogee, for payments made to employee's dependents, questions of negligence, assumption of risk, and contributory negligence of both employee and employer were for jury. *Standard Acc. Ins. Co. v. M.*, 289NW782. See Dun. Dig. 2996.

An ordinance of city of St. Paul under which city officers employ city employees in trimming trees along telephone and electric power lines and charge expense thereof to utilities involved is within powers conferred by the welfare clause of city charter. *Erny v. C.*, 290NW427. See Dun. Dig. 6617.

Where housewife was temporarily blinded by an electric flash while operating an electric stove in usual manner, court properly applied *res ipsa loquitur* doctrine in action against power company which had installed stove a few days prior thereto. *Peterson v. M.*, 291NW705. See Dun. Dig. 7044.

In action for injuries caused by flash of electricity while operating electric stove in ordinary manner, court did not err in instructing jury with respect to defendant's power company's capacity as a supplier of chattels and as a distributor of electricity, since negligence of defendant must be result of default in either capacity. *Id.* See Dun. Dig. 6995.

An individual, by mere entry upon and use of public highways of a township with his water supply system, obtained no statutory franchise, since such water supply system is not to be classified as "water power". *Kuehn v. V.*, 292NW187. See Dun. Dig. 4168.

Individual maintaining water supply system along highway could not claim authority or franchise on ground of municipal acquiescence since no prescriptive right may be gained in a public street or highway. *Id.* See Dun. Dig. 8448.

Where contract for repairing a county aid road provided that power poles should be removed by owners, and cooperative electric company refused to make two moves, and county agreed to pay for one move, cost to county was a necessary incidental expense which could properly be paid out of road and bridge fund. *Op. Atty. Gen.*, (98a-12), Nov. 4, 1939.

Where alteration in highways necessitated removal of telephone pole to a temporary location and their removal back after grading was completed, cost of moving poles falls upon company and not upon county. *Op. Atty. Gen.* (98a-12), Feb. 13, 1940.

Water power, telegraph, telephone, or light, heat and power company may install lines on public highways outside a city or village without any permit from county commissioners, whether roads are towns, county or state roads. *Op. Atty. Gen.* (624c-14), June 17, 1940.

Where rural cooperative electric association erected poles along county highway but outside its 33-foot right-of-way, and county obtained slope easement from abutting owners for purposes of improving road, cost of removing poles should be paid by county, regardless of restrictions in permit to construct lines along and over county roads. *Op. Atty. Gen.* (377a-13), Sept. 18, 1940.

It is not necessary for village to advertise for bids in connection with granting of franchise to electric light and power company to furnish energy to village and in-

habitants, if franchise is not exclusive and does not exceed a period of 15 years. Op. Atty. Gen. (707a-15), Dec. 3, 1940.

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. Op. Atty. Gen. (204a-5), Dec. 10, 1940.

CEMETERY ASSOCIATIONS

7559. Officers of cemetery associations to make reports.

When a township is dissolved, it is duty of county commissioner to appoint an actuary for town cemetery until it is disposed of. Op. Atty. Gen. (870), Dec. 10, 1940.

7561. Land, how acquired—Extension.—Every such corporation may take and hold, by purchase or gift, within the county of its location, and in an adjoining county, not exceeding 300 acres of land to be actually used and occupied exclusively for the burial or cremation of the dead and for purposes necessary or proper thereto. Such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees shall determine, with such avenues, alleys, and walks as they deem proper, and a map of such survey shall be filed for record with the register of deeds of the county of its location; and whenever the corporation desires to enlarge its cemetery, and cannot agree with the owners of the land desired therefor, the same may be acquired under the power of eminent domain: Provided, that public necessity, propriety and convenience require such proposed enlargement, which, together with the boundaries thereof, shall be first established and determined as issues of fact. (As amended Act 16, 1941, c. 240, §1.)

Lands acquired must be within county of location of cemetery, and association cannot purchase adjoining lands in another county. Op. Atty. Gen. (870a), Nov. 18, 1940.

7563. Funds—How used—Grants in trust.

A cemetery corporation is authorized, under its power to defray necessary expenses in management and care of its cemetery, to pay unemployment compensation taxes imposed on basis of labor employed in operating and maintaining its cemetery. Christgau v. W., 293NW619. See Dun. Dig. 1386.

7570. Cemetery association may reinvest; etc.

Association may restrain the burial of a member of a lot owner's family if lot owner is in arrears in his annual assessments, if according to regulations in effect at time of sale of lot. Op. Atty. Gen. (870a), Aug. 20, 1940.

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

7640. Supervision by examiner.

This section is superseded by §5323. Op. Atty. Gen., (29a-6), April 12, 1940.

7648. Right to acquire and hold real estate.—Save as otherwise specially provided, the entire cost of land and buildings for the transaction of the business of such a corporation, including premises leased to others, shall not be more than as follows, assets other than cash being taken at cash market value: For a bank or a trust company, 40 per cent of its existing capital and surplus; for a savings bank, 50 per cent of its net surplus; for a building and loan association, five per cent of its net assets. Any such corporation may change its location, dispose of its place of business, and acquire another, upon the written approval of the commissioner of banks. (As amended Act Feb. 28, 1941, c. 37, §1.)

7650. Schedule of fees.

This section is superseded by §5332. Op. Atty. Gen., (29a-16), April 12, 1940.

7658-7. Banking institutions may take advantage of Federal Banking Act.

Fire Department Relief Association is probably entitled to interest on savings deposits in a national bank under regulations of the Federal Deposit Insurance Corporation. Op. Atty. Gen. (30d), Oct. 4, 1940.

Village general fund, waterworks fund, sewer fund, sewage disposal fund, light fund, and municipal liquor store fund are insured in the aggregate up to \$5000, re-

gardless of number of accounts, and notwithstanding that law requires some of the funds be kept entirely separate from other funds. Op. Atty. Gen. (355E), Feb. 18, 1941.

7658-21. Certain deposits assumed to be abandoned.

Sale of escheated property by State treasurer, §95-4. Tennessee statute requiring banks to pay over to the state the amount of deposits which have been inactive for 15 years, held invalid as to national banks as invading federal powers. American Nat. Bank v. C., 135SW(2d) (Tenn)935.

State savings bank may not lawfully credit deposits of less than \$10.00, which have not been dealt with for 20 years, to its surplus and undivided profits account, since it does not own such deposit outright. Op. Atty. Gen. (30d), June 11, 1940.

Certificate of deposit is within Escheat Law. Op. Atty. Gen. (29-a-4), July 31, 1940.

7658-22. Banks to notify attorney general.

(b). A reference to previously filed statement of names may be accepted, if they indicate all changes in list of deposits already filed. Op. Atty. Gen. (29a-12), Feb. 1, 1940.

BANKS

7663. Powers and duties.

Where check was drawn on bank containing deposit of both drawer and payee and was deposited and credited to payee, but before it was charged against drawer's account, payment was stopped, bank could not avoid obligation to payee by charging bank amount of check. W. A. White Brokerage Co. v. C., 290NW790. See Dun. Dig. 787.

A collecting bank owes a duty to payee to exercise ordinary care in collection of item. First Nat. Bank v. N., 14Atl(2d)(NJ)765.

Indorsement "for deposit" indicates that endorsee bank is agent for collection and not owner of item. Id.

7669. Stock list—Filing—Effect of transfer; etc.

Voluntary transfer by husband to his wife of his assets without retaining sufficient property to meet his liabilities held fraudulent with respect to his liability upon bank stock. McKey v. R., (CCA7), 114F(2d)129. Cert. den. 61SCR72.

Provision requiring printing "subject to single liability" on letterheads is now obsolete and may for all practical purposes be disregarded. Op. Atty. Gen. (29a-28), May 31, 1940.

7671. Dividends—Surplus.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7678. Contracts, how made.

Where bank cashed 4 postal money orders and in turn received payment from post office, government was entitled to recover from bank amount paid. U. S. v. Northwestern Nat. Bank & Trust Co., (DC-Minn), 35FSupp484.

If the bank honored check and marked it paid, fact that there was an overdraft did not prevent bank from denying liability as a garnishee of depositor on theory that bank had no legal right or authority to cash the check. Midland Loan Finance Co. v. K., 287NW869. See Dun. Dig. 780.

A joint control agreement by an administrator, his surety and depository by its terms limited to special administration covers the administrator's bank account as general administrator, where the evidence shows that such was the intention and understanding of the parties, and bank was liable to surety for permitting withdrawal by check without counter signature of surety. Fidelity & Casualty Co. of New York v. P., 290NW305. See Dun. Dig. 783.

7681. Capital not to be withdrawn—Dividends.

Control of payment of dividends by state bank is within power of commissioner of banks, and he is not required to sit idly by until some provision of law is violated before he can act. Op. Atty. Gen. (29a-15), Nov. 13, 1940.

7682. Insolvent banks—Examiner to take charge.

Receiver took no more than bank had in pledged assets and could sell no more. Bishop v. L., 291NW297. See Dun. Dig. 824e.

7689. Liquidation and distribution of closed banks—Procedure where claim owners residences are unknown.

The commissioner of banks shall collect all debts due and all claims belonging to such bank, and upon the order of the district court may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank on such terms as the court shall direct, and may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. The commis-

sioner of banks may under his hand appoint one or more special deputy examiners as agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner of banks and a certified copy in the office of the secretary of state and also the clerk of the district court of the county in which the principal office of such bank was located. The commissioner of banks may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as the commissioner of banks may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employes as he may deem necessary and upon his request in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each bank, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be from the proceeds of the assets of the bank with whose liquidation he becomes thereby connected. The commissioner of banks shall require from each special deputy examiner such security for the faithful discharge of his duties as he may deem proper. The commissioner of banks shall cause notice to be given by advertisement in a legal newspaper in the city or village where such bank is located, or, if none in such city or village, then in the county, weekly for five (5) consecutive weeks, calling on all persons who may have claims against such bank to present the same to the commissioner of banks, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in said notice. The commissioner of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. If the commissioner of banks doubts the justice and validity of any claim he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice according to law shall be filed with the commissioner of banks. An action upon a claim so rejected must be brought within sixty days after such service and the filing of proof thereof. The venue of such action shall be in the county in which such bank is located, and such action shall be brought jointly against the bank and the commissioner of banks as statutory liquidator of said bank. Any person having a claim against such bank and not presented and filed within the time fixed in the notice to creditors may present the same and the commissioner of banks shall allow or reject the same in whole or in part as hereinbefore provided, and suit on such rejected claim not filed within the time fixed by the notice shall be brought within thirty days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the bank and the taking over of the same by the commissioner of banks for purposes of liquidation. Upon taking possession of the property and assets of such bank the commissioner of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner of banks and one in the office of the clerk of district court of the county in which the principal office of such bank was located. Upon the expiration of the time fixed for the presentation of claims, the commissioner of banks shall make in duplicate a complete list of the claims

presented, including and specifying such claims as have been rejected by him, one such list to be filed in his office and one in the office of said clerk of district court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special deputy examiners and the other employes and assistants of the commissioner of banks, except legal counsel, and all expenses of supervision and liquidation shall be fixed by the commissioner of banks, subject to the approval of the district court of the county in which said bank is located, after notice fixing the time and place when the commissioner of banks will hear and fix the amount of all such expenses, and the amount so fixed and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificates of the commissioner of banks and the attorney general respectively, out of the funds of such bank in the hands of the commissioner of banks. The money collected by the commissioner of banks shall be from time to time deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposits shall be preferred before all of the deposits. At any time after the expiration of a date fixed for the presentation of claims the commissioner of banks may, out of the funds remaining in hands after the payments of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons and in such amounts and upon such notice as may be directed by the said district court. Objections to any claim not rejected by the commissioner of banks may be made by any party interested by filing a copy of such objections with the commissioner of banks, who shall present the same to the district court at the time of the next application to declare a dividend. Whenever any such bank of whose property and business the commissioner of banks has taken possession as aforesaid, deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court of the county in which such bank is located to enjoin further proceedings, and said court, after citing the commissioner of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may upon the merits, dismiss such application or enjoin the commissioner of banks from further proceedings and direct him to surrender such business and property to such bank. Whenever the commissioner of banks shall have paid each and every depositor and creditor of such bank (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claims, and shall have made proper provisions for unclaimed and unpaid deposits or dividends and shall have paid all the expenses of the liquidation, the commissioner of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where the bank is located. At such meeting the stockholders shall determine whether the commissioner of banks shall be continued as liquidator and shall wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner of banks he shall complete the liquidation of the affairs of such corporation, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed he shall reimburse those stockholders who paid their stock assessments pursuant to the order for assessment to the extent that each has paid, if the proceeds are insufficient to reimburse

such paying stockholders in full, then in just proportion. Any proceeds remaining undistributed after such paying stockholders have been reimbursed as by this act provided shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner of banks a bond to the state of Minnesota in such amount with such sureties and in such form as shall be approved by the commissioner of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner of banks shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in his hands, and upon such transfer and delivery, the said commissioner of banks, shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank as is herein provided in the case of distribution by the commissioner of banks, except that the expenses thereof shall be subject to the discretion and control of the said district court. In case of the death, removal or refusal to act of any such agent or agents, the stockholders, on the same notice as that after which they were elected, and in the same way may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Upon the liquidation of any bank, trust company, or financial institution liquidated by the commissioner of banks as statutory liquidator, if any dividends or any moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the commissioner of banks, he may pay same into the state treasury as hereinafter provided. Whenever the commissioner of banks shall be satisfied that the process of liquidation should not be further continued he may make and certify triplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due him and his last known address. Upon one of such lists, to be retained by the commissioner of banks he shall indorse his order that such unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of said lists shall be delivered to the state treasurer and another to the state auditor and the commissioner of banks shall retain in his office such records and proofs concerning said claims as he may have which shall thereafter remain on file in his office. The treasurer shall execute upon the list retained by the commissioner of banks a receipt for such money which shall operate as a full discharge of the commissioner of banks on account of such claims. At any time within six years after such receipt, but not afterward, the claimant may apply to the commissioner of banks for the amount so deposited for his benefit, and upon proof satisfactory to the governor, the attorney general and the commissioner of banks, or to a majority of them, they shall give an order to the auditor to issue his warrant upon the treasurer for such amount, and such warrant shall thereupon be issued. If no such claim be presented within six years the commissioner of banks shall so note upon his copy of said list and certify the fact to the auditor and treasurer who shall make like entries upon the corresponding lists in their hands; and all further claims to said money shall be barred. Provided, however, that the state treasurer shall pay to the commissioner of banks not to exceed 50 per cent of the amount so turned over to the state treasurer by the commissioner of banks to be used to partially defray expenses in connection with the liquidation of

closed banks, in such amounts and at such times as the commissioner of banks shall request. (As amended Act Apr. 10, 1941, c. 183, §1.)

Funds in possession of commissioner of banks set aside for unforeseen expenses incident to liquidation, which have been established by withholding a portion of final liquidating dividends, may be used by the commissioner for any expense incident to administration of the affairs of the closed bank department of his division. Laws 1941, c. 92.

Where bank entered into an agreement with its depositors and creditors whereby former was to treat a specified amount of a certain judgment as an asset, amount remaining to be held in trust for latter, and that all recoveries made on such asset should be first applied toward liquidation of the bank's "share", judgment debtor being in process of liquidation, and extent of reorganized bank's priority" being at issue, bank's right to first payment does not include interest on amount at which judgment was treated by it as an asset. *Farmers & Merchants State Bank, 288NW19. See Dun. Dig. 824e.*

The rule of *American Surety Co. of New York v. J. N. Peyton, 186 Minn. 588, 244NW74*, has no application to a case where all creditors stand, as against the insolvent debtor, on an equal footing. *Id.*

Rule of caveat emptor applies in judicial sales. *Bishop v. L., 291NW297. See Dun. Dig. 824e.*

Commissioner liquidating a bank can compel village to pay warrants held by bank notwithstanding that there are delinquent taxes on buildings owned by the bank far in excess of the amount of the warrants. *Op. Atty. Gen., (476c-6), Oct. 30, 1939.*

Persons employed by commissioner of banks and statutory liquidator in liquidating business of a particular bank or banks are employees of bank on behalf of which their services are rendered and are not state employees under the civil service act. *Op. Atty. Gen., (644), April 22, 1940.*

7690-12. Reorganization.

Where bank entered into an agreement with its depositors and creditors whereby former was to treat a specified amount of a certain judgment as an asset, amount remaining to be held in trust for latter, and that all recoveries made on such asset should be first applied toward liquidation of the bank's "share", judgment debtor being in process of liquidation, and extent of reorganized bank's priority being at issue, bank's right to first payment does not include interest on amount at which judgment was treated by it as an asset. *Farmers & Merchants State Bank, 288NW19. See Dun. Dig. 824e.*

The rule of *American Surety Co. of New York v. J. N. Peyton, 186 Minn. 588, 244NW74*, has no application to a case where all creditors stand, as against the insolvent debtor, on an equal footing. *Id.*

7690-13. Provisions of reorganization.

(a). Where court duly appointed a trustee and liquidating agent of a bank in process of reorganization, and later appointed a co-trustee but upon inadequate published notice and authorized him to bring several suits, and court granted motion for removal of co-trustee, court had plenary jurisdiction of the res and acted within its jurisdiction in later directing co-trustee to proceed to judgment in suits commenced by him. *First State Bank of Sauk Centre, 292NW185. See Dun. Dig. 824e.*

7692. Consolidation, when authorized.

Contention that written guaranty executed to trust company prior to its consolidation with plaintiff bank was not relied upon by plaintiff in making loans to defendant subsequent to consolidation, held frivolous, where guaranty was a continuing one and was in possession of plaintiff at all times subsequent to consolidation. *Chase Nat. Bank v. B., (DC-Minn), 32FSupp230.*

7697-9. Deposits of trust funds.

An unincorporated volunteer fire department and an incorporated fire department relief association should be considered as separate depositors, though membership of both organizations is the same. *Op. Atty. Gen., (193E-2), Dec. 14, 1939.*

BANKS AND TRUST COMPANIES

7699-34. Voluntary liquidation—Title to assets.—

Before the commissioner of banks shall file his certificate of liquidation, the bank or trust company shall petition the district court in the county of its location and have the court appoint a trustee, and the bank or trust company shall transfer the title to all assets omitted from the liquidation of the bank or trust company to the trustee for the benefit of the persons entitled thereto, and the assets shall be administered and distributed by the trustee subject to the approval of the district court. (As amended Act Mar. 4, 1941, c. 42; §1.)

SAVINGS BANKS

7714. Authorized securities for savings banks.—

1. * * * * *

2. In the bonds or notes of any state which has not defaulted in the payment of any bonded debt within ten years prior to the making of such investment; and in the highway revenue bonds or certificates of such states payable out of irrevocably pledged special revenues to be derived from gasoline or other motor fuel taxes or motor vehicle license fees, provided that such revenues during the most recent fiscal year of such state (next preceding the date of such investment) were equal to at least one and one quarter times the interest, principal, and sinking fund requirements of such revenue bonds or certificates during such fiscal year. (As amended Act Apr. 22, 1941, c. 380, §1.)

3. (a) In the bonds, certificates of indebtedness, or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any city of the state of Minnesota containing over 50,000 inhabitants, or of any board of any such city, without regard to any debt limits other than those applicable to the issuance thereof;

(b) In the bonds, certificates of indebtedness or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any county, city, town, village, or school, drainage or other district, or public authority, created pursuant to law for public purposes in Minnesota, provided that the net indebtedness of such county, municipality, district, or authority as net indebtedness is defined by Mason's 1927 Statutes, Section 1935, or any amendments thereof, shall not exceed ten per cent of its assessed valuation;

(c) In the bonds, certificates of indebtedness or other interest bearing obligations, payable out of a levy of ad valorem taxes, of any county, city, town, village, or school, drainage or other district, or public authority, created pursuant to law for public purposes in any state of the United States other than Minnesota, provided that the total bonded indebtedness of such county, municipality, district or authority, exclusive of revenue bonds or certificates, shall not exceed ten per cent of its assessed valuation; and provided further that if such county, municipality, district or authority is of any state other than Iowa, Wisconsin, North Dakota, or South Dakota, it shall contain at least 3,500 inhabitants;

(d) In the bonds, certificates or other interest bearing obligations, payable out of special revenues, of any county, city, town, village, or school, drainage, or other district, or public authority, created pursuant to law for public purposes in any state of the United States; provided, however,

(aa) that if such county, municipality, district or authority is of any state other than Minnesota, it shall contain at least 3,500 inhabitants; and

(bb) that such obligations shall have been issued to finance the purchase or construction of or addition to a public enterprise furnishing water, sewer, lighting, power, gas, or road facilities, from which revenue is to be derived; and

(cc) that the governing body or other legally constituted authority shall have covenanted or shall be required by law to establish and maintain rates to yield sufficient revenue for the payment of operating expenses, maintenance expenses, and principal and interest on such revenue obligations and to pledge such revenue irrevocably to said purposes; and

(dd) that at the date of investment such public enterprise shall have been in operation for at least three years; and

(ee) that during the preceding three fiscal years its annual net earnings, after payment of operating expenses and maintenance expenses, shall have been on the average at least one and one quarter times the average annual interest, principal and sinking fund requirements on such revenue obligations during the period from the end of its most recent fiscal year to

the final maturity of such obligations. (As amended Act Apr. 22, 1941, c. 380, §2.)

(4-8) * * * * *

9. In railroad equipment trust obligations, comprising bonds, notes or certificates, which when issued are secured by new standard gauge rolling stock purchased or leased by any railroad incorporated in the United States or in Canada, or by the receiver or trustee of any such railroad, or by any corporation engaged in the business of leasing or furnishing railroad rolling stock, provided, however, that the entire issue of such obligations:

(a) Is required to be paid, in United States dollars within the United States, within fifteen years from date of issue in approximately equal annual or semi-annual installments commencing not later than three years after the date of issue, and

(b) Is of an aggregate amount not exceeding eighty per cent of the cost of the equipment securing such issue; but if issued originally in an amount which exceeded such eighty per cent, then investment in the obligations of such issue shall nevertheless be authorized as soon as or at any time after all the unpaid obligations of such issue are reduced to or are less than fifty per cent of the cost of the equipment securing such issue. (As amended Act Apr. 22, 1941, c. 380, §3.)

(10-13) * * * * *

(13).

Investment of fiduciary funds in life insurance policies and annuities. 25MinnLawRev298.

Generally speaking, state bank may invest in bonds of a township refunding warrants. Op. Atty. Gen. (43B-3), July 8, 1940.

(3).

Bonds issued for a sewage disposal plant for use of which charges are made are to be deducted in determining indebtedness of village. Op. Atty. Gen., (928a-8), May 11, 1940.

(13)(b).

Mere relationship of guardian and ward standing alone would not create an insurable interest, but an insurable interest may arise under particular circumstances, such as dependency, expectation of aid or benefit when needed, etc. Op. Atty. Gen. (346d), June 25, 1940.

TRUST COMPANIES

7735. Investment of trust funds by corporate trustee—Commingling funds.—It may invest all moneys received by it in trust in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of such investments and securities and evidences thereof. Whenever special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection thereof, and shall be responsible for their validity, regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be the sole trustee or one of two or more co-trustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled shall be owned and held by such trust company in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested, provided, however, that not more than \$25,000 (at the cost price of such investments) shall be so invested for any one trust at any one time in fractional parts or as commingled funds for investment, unless the authority to invest in fractional parts or as commingled funds be given in the order, judgment, decree, will or other written instrument governing such trust. Funds so commingled for investment shall be designated

collectively as a common trust fund. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing shall apply as well whether a corporate trustee is acting alone or with an individual co-trustee. (As amended Act Apr. 18, 1941, c. 298, §1.)

GENERAL BUILDING AND LOAN ASSOCIATIONS

7764. Withdrawal of stock — Valuation — Times. [Repealed.]

Repealed, Apr. 21, 1939, c. 391, §51.
In action against building and loan association to rescind purchase of house and lot, in payment for which plaintiff applied stock of defendant, evidence held insufficient to show that defendant misrepresented its own financial situation or value of stock accepted in payment. *Beck v. N.*, 288NW217. See *Dun. Dig.* 1172.

SAVINGS, BUILDING AND LOAN ACT

7770-24. Rights and privileges of members.

Statute supersedes any inconsistent by-laws respecting qualification to vote. Op. Atty. Gen., (53a-26), Dec. 13, 1949.

7770-25. Rights and privileges of officers and directors.

Directors need not be voted on separately, but to be elected a particular director must receive a majority of the vote of the members present and voting. Op. Atty. Gen., (53a-10), Dec. 13, 1949.

7770-45. Not to deal in real estate.—No such association shall engage in the business of buying and selling or dealing in real estate, but it may secure obligations due to it and the payment of its loans by taking real estate mortgages. It may purchase at any sheriff's, judicial or other sale, public or private, any real estate upon which it has a mortgage, judgment or other lien, or in which it has any interest. It may acquire title to any real estate on which it holds any lien, in full or part satisfaction thereof, and may sell, convey, hold, lease or mortgage the same. Also in transactions involving the purchase by a shareholder of improved real estate for home purposes, or for the construction of a home, a savings, building and loan association, organized under the laws of this state, or of the United States of America, may when authorized by its by-laws acquire the title thereof, and it may give to such shareholders a contract to convey the same as upon a sale thereof and upon default in the conditions of such contract, the association may terminate the interest of such shareholder pursuant to law. (As amended Apr. 10, 1941, c. 165, §1.)

Commissioner of Banking may order discontinuance of practice of lending money on mortgages executed and recorded prior to record ownership by mortgagor, though such a mortgage would be effective in equity. Op. Atty. Gen. (53-2-22), Mar. 17, 1941.

CERTAIN INVESTMENT COMPANIES

7771. Investment companies under control of commissioner of banks.

A company applying for a license under this section must be transacting a business similar to that of a building and loan association, and there must be no other law under which such a company might be licensed. Op. Atty. Gen., (29a-8), April 19, 1940.

A license under §7771, would confer no right to transact business of an industrial loan and thrift company described in §7774-25. *Id.*

7772. Supervision of commissioner; etc.

Examiner's salary for time taken to make examination, cost of supplies used, and a portion of office overhead, as well as for travel, hotel and meals of examiner, are "actual necessary expenses." Op. Atty. Gen. (29a-16), Oct. 18, 1940.

CREDIT UNIONS

7774-4. Powers enumerated.

Local credit unions are without authority to hold shares of, or deposit funds with a central league credit union. Op. Atty. Gen., (53B), April 3, 1940.

7774-5. Membership in.

A by-law permitting a member who leaves field of membership of credit union to retain his membership but without right to borrow, is invalid. Op. Atty. Gen., (53B), Oct. 25, 1939.

Family relationship is not sufficient to make a person eligible to membership. Op. Atty. Gen., (53B), Oct. 26, 1939.

7774-19. Expulsion or withdrawal of members.

A by-law permitting a member who leaves field of membership of credit union to retain his membership but without right to borrow, is invalid. Op. Atty. Gen., (53B), Oct. 25, 1939.

7774-20. Voluntary dissolution.—The process of voluntary dissolution shall be as follows:

(a) A credit union may be voluntarily liquidated after two-thirds of the entire membership shall have voted such liquidation at a special meeting called by a majority of the board of directors for that purpose, upon fourteen days' mailed written notice to each member clearly stating the purpose of such special meeting. By a majority vote of the members present at such meeting, a committee of three members shall be elected to liquidate the credit union.

Vacancies in this committee shall be filled by the remaining members of the committee, acting jointly with the board of directors or by and with the approval of any ten or more shareholders.

(b) Immediately after such meeting and before such committee shall proceed with the liquidation, the officers of the credit union shall file with the Commissioner of Banks a certified copy of the minutes of such meeting, a written statement outlining the plan of liquidation and a verified statement in writing signed by a majority of the officers consenting to such liquidation containing the names and addresses of all officers and directors of the credit union. After the Commissioner of Banks shall by proper examination determine that such credit union is solvent, he shall issue a certificate of approval of the liquidation, which certificate shall be filed with the Register of Deeds in the County where such credit union is located. From and after such special meeting the credit union shall cease to do business except for purposes of liquidation. Before commencing such liquidation such committee shall execute and file with the Commissioner of Banks a bond running to the State of Minnesota for the benefit of the members and creditors of the credit union in such amount and with such sureties and in such form as shall be approved by the Commissioner of Banks conditioned for the faithful performance of all duties of its trust.

(c) Upon filing of such certificate with the Register of Deeds, the credit union shall be deemed dissolved and its corporate existence terminated except for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to liquidate. The credit union shall have a corporate existence and may sue and be sued.

(d) If the credit union shall not be completely liquidated and its assets discharged within three years after such special meeting of the members, the Commissioner of Banks may take possession of the books, records and assets and proceed to complete the liquidation in the manner then provided by law for the liquidation of closed banks.

(e) Funds representing unclaimed dividends in liquidation in the hands of such liquidating committee or the Commissioner of Banks for six months after date of final dividend shall be deposited with the State Treasurer who shall within one year thereafter pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to the same, and at the end of such year the State Treasurer shall credit all residue of such deposit to the General Revenue Fund.

(f) Upon completion of the liquidation by such liquidating committee it shall file with the Commissioner of Banks a verified statement in writing signed by the members of such committee stating that all debts of the credit union, including deposits, have been paid except unclaimed dividends, and if any such, the amount thereof, the names of the persons entitled thereto with their last known addresses, and all books

and papers of the credit union shall thereupon be deposited with the Commissioner of Banks. ('25, c. 206, §20; Apr. 20, 1933, c. 346, §4; Apr. 14, 1937, c. 213, §7.)

Editorial note.—This section is republished to eradicate errors in 1938 and 1940 Supplements.

7774-24a. Reorganization of federal credit union under state law.—Whenever any federal credit union authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority in writing of two-thirds of the members of the credit union and upon approval of the commissioner of banks, may execute a certificate of incorporation under the provisions of the state credit union act, which in addition to the other requirements of law, shall state the authority derived from the shareholders of such federal credit union; and upon recording such certificate as required by law, it shall become a legal state credit union. Thereupon the assets, of said dissolved credit union, subject to its liabilities not liquidated under the federal law before such incorporation, shall vest in and become the property of such state credit union. (Act Apr. 28, 1941, c. 510, §1.)

7774-24b. Reorganization of state credit union under federal laws.—Whenever any state credit union authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority in writing of two-thirds of the members and the approval of the commissioner of banks, may execute a certificate of incorporation under the provisions of the federal credit union act, which federal union shall be regarded as continuing the existence of the state credit union. Any officer of the state credit union, or member of the supervisory and credit committees, elected to a corresponding office in the federal credit union, shall be regarded as holding over such office from the state credit union to federal credit union. (Act Apr. 28, 1941, c. 510, §2.)

INDUSTRIAL LOAN AND THRIFT COMPANIES

7774-27. Must secure certificate from department of commerce.

A license under §7771, would confer no right to transact business of an industrial loan and thrift company described in §7774-25. Op. Atty. Gen., (29a-8), April 19, 1940.

SMALL LOAN BUSINESS

7774-41. Small loan companies to be licensed.

Not unconstitutional as working a discrimination based on amount of loan. Fuller, 102Fac(2d)(Cal)321.

7774-50. Commissioner may investigate loan companies.

Commissioner of banks is empowered to investigate interest rates of money lenders not licensed under act as well as those who are licensed, except those specifically eliminated, such as pawn brokers, industrial loan and thrift companies, credit unions, banks, savings banks and trust companies. Op. Atty. Gen., (29a-8), Nov. 16, 1939.

OTHER CORPORATIONS FOR PROFIT

FOR MINING AND OTHER PURPOSES

7777. Formation—Purpose. [Repealed.]

As affecting necessity for renewal of corporate existence of corporate for mining and smelting ores and manufacturing iron, copper and other metals, laws 1876, chapter 28, was in full force and effect in 1903. Op. Atty. Gen. (92a-9), Jan. 13, 1940.

CO-OPERATIVE ASSOCIATIONS

7822. Formation—purposes.

Act Feb. 25, 1941, c. 20, authorizes renewal of corporate existence.

7828. Distribution of profits.

Profits and earnings may be distributed to those entitled thereto by by-laws, and need not be members. Op. Atty. Gen. (93A-11), Feb. 28, 1941.

SUPPLEMENTARY LAWS

7834. Co-operative associations—Who may organize—Purpose—Powers.—A co-operative association may be formed for the purpose of conducting any agri-

cultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile or electrical heat, light or power business, or for all such purposes or for any other lawful purpose, upon the co-operative plan, and in addition to other powers such co-operative association shall have the power either as agent or otherwise to buy, sell or deal in its own products, the products of its individual members or patrons, the products of any other co-operative association or of its members or patrons, whether such co-operative associations be organized under the provisions of this act or otherwise. It shall be lawful for such co-operative association to sell its own products as well as the products of its members or patrons for them, or the products of any other co-operative association or of its members or patrons for them, as the case may be, either individually or collectively, and to negotiate the price at which such products may be sold either for itself or for its members or patrons, or such other co-operative association and its members or patrons, individually or collectively, as the case may be; also to enter into or become a party to any contract or agreement either for itself or for its individual members or patrons, or between it and its member. For the purposes above stated such co-operative association shall have the power and authority as a corporation, to purchase and hold, lease, mortgage, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require, also to erect buildings or other structures or facilities upon its own lands or leased grounds, or upon right of way legally acquired by such co-operative association. Such co-operative association shall have the power and authority to issue bonds or other evidence of indebtedness and to borrow money to finance the business of the association, or to make advances to its members or patrons upon produce delivered by such members or patrons to the association provided, however, that the indebtedness so incurred shall not exceed the limit of indebtedness fixed in the articles of incorporation of such co-operative association, as hereinafter required. For the purpose of empowering and authorizing co-operative associations incorporated under the provisions of this act to join with other co-operative associations in this state or other states, whether incorporated under this act or under the laws of any other state, to form district, state or national organizations or market agencies, any co-operative association incorporated under this act, by vote of the governing board thereof may purchase, acquire, hold or dispose of the stock of any other co-operative association or corporation, whether incorporated under this act or under the laws of any other state, and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership of such stock. A co-operative association incorporated under this act shall also have the power and authority, either for itself or for its individual members or patrons, to do and perform every act and thing necessary or proper to the conduct of its business or the accomplishment of the purposes set forth in this act, and in addition any other rights, powers or privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this act.

A co-operative association incorporated under this act, constituted wholly or partially of other co-operative associations organized under this act or under the laws of this or any other state, shall have the power to accept deposits of money or securities from such co-operative associations, to loan or borrow upon such security as it may consider sufficient in dealing with its member co-operatives and to exercise any and all fiduciary powers in its relations with such co-operatives as constitute its membership.

For the purpose of this act a co-operative association shall be defined as any corporation or associa-

tion of ultimate producers and consumers organized under this act or any other statute of the state of Minnesota now existing providing for the incorporation of co-operative associations; also any central corporation or association composed wholly or in part of such associations. No corporation or association hereafter organized in this state shall be entitled or permitted to use the term "co-operative" as part of its corporate or business name or title, or to represent itself as a co-operative association, unless it has complied with the provisions of this act, or any other law of this state now existing or hereafter enacted providing for the incorporation of co-operative associations. Any corporation or association which violates this provision shall be guilty of a misdemeanor. (As amended Apr. 1, 1941, c. 114, §1.)

Laws 1941, c. 20, provides for renewal of the corporate existence of co-operative companies and associations and validates acts done and contracts entered into by them.

Persons who are not served by an electrical cooperative are not eligible for membership. Op. Atty. Gen., (93a-42), Sept. 25, 1939.

Corporation for profit may not use word "cooperative" in its name, but statute has no retroactive effect. Id.

Provision in articles for division or distribution of profits or basis of patronage is essential element of a cooperative. Id.

An electric cooperative, having articles of incorporation authorizing it, may make loans to members for purpose of financing wiring of premises and acquisition and installation of electrical and plumbing appliances and equipment. Op. Atty. Gen., (93B-29), Oct. 25, 1939.

A cooperative may be formed for purpose of furnishing light and power to its members. Op. Atty. Gen., (93B-29), Nov. 8, 1939.

Shares of stock cannot be cancelled for non-user or in event holders cease to be ultimate consumers or ultimate producers, without payment of value thereof. Op. Atty. Gen., (93a-38), April 1, 1940.

7835. Organizers—Articles of incorporation—Contents and filing.—A co-operative association may be organized under the provisions of this act by five or more incorporators, who may act for themselves as individuals or as the agents of other co-operative associations, whether organized under this act or otherwise.

Persons forming a co-operative association under this act shall sign and acknowledge written articles of incorporation. The articles of incorporation of any association organized under or subject to the provision hereof shall always contain provisions specifying (1) the name of the association, its purpose, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, doing business in the state and shall be preserved to it during its corporate existence; (2) the highest amount of indebtedness to which the association shall at any time be subject; (3) the period of its duration, which shall not exceed 50 years in the first instance, but the articles of incorporation may from time to time be amended so as to provide for an additional term or terms not exceeding 50 years each; (4) if organized on a capital stock basis the total authorized number of shares and the par value of each share; a description of the classes of shares, if the shares are to be classified; a statement of the number of shares in each class and relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and a provision that only common stockholders shall have voting power; (5) that individuals owning common stock shall be restricted to one vote in the affairs of the association; (6) that shares of stock shall be transferable only with the approval of the board of directors of the association; (7) that dividends upon capital stock of the association shall not exceed six per cent annually; (8) in what governing board its management shall be vested, the time of the annual meeting of the stockholders at which such governing board shall be elected, and the names and places of residence of those who shall compose such governing board until the first annual meeting of the stockholders; and (9) that net income in excess of dividends and additions to reserves and surplus shall

be distributed on the basis of patronage, and that the records of the association may show the interest of patrons, stockholders and members in the reserves and surplus. The articles of incorporation may contain any other lawful provision. Co-operative associations may also be formed upon a membership basis and without capital stock. Such associations organized on a capital stock basis may be organized, and shall have the same powers and authority as are conferred upon such associations, and the articles of incorporation of any such non-stock association shall contain the provisions required in the articles of incorporation of an association organized upon a capital stock basis wherever the same are applicable to an association organized upon a membership basis. No member of an association organized upon a membership basis shall have more than one vote. Common stockholders shall be deemed to be members of associations organized on a capital stock basis.

Co-operative associations organized under or subject to the provisions hereof shall be subject to the provisions of Section 3996-1, 1940 Supplement to Mason's Minnesota Statutes of 1927, except as specifically provided in Section 3996-2(9), 1940 Supplement to Mason's Minnesota Statutes of 1927.

The original articles of incorporation, or a certified copy thereof, verified as such by the affidavits of two of the incorporators, shall be filed with the secretary of state and a copy thereof, certified as above required, shall be recorded in the office of the register of deeds of the county in which the principal place of business of the association is located. For filing the articles of incorporation or amendments thereto with the secretary of state there shall be paid to the state treasurer a fee of \$5.00. (As amended Apr. 1, 1941, c. 114, §2.)

Attorney General is not authorized to approve resolutions of extension of corporate existence of cooperatives, his approval being limited to articles and by-laws and amendments thereto. Op. Atty. Gen., (93a-8), Sept. 26, 1939.

All cooperatives are subject to securities act except those dealing in agricultural, dairy, livestock and produce businesses and the operation of rural telephone and rural electric distribution systems. Op. Atty. Gen., (616B-5), Oct. 10, 1939.

7836. Capital—Limits of interest—Vote.—The amount of the authorized capital stock and the number of shares may be increased or diminished at any regular meeting of the stockholders of the association or at any special meeting of the stockholders called for such purposes, in the manner hereinafter provided for amending the articles of incorporation.

Within 30 days after the adoption of an amendment increasing or diminishing the authorized capital stock, articles of amendment shall be filed and recorded as provided in Section 7844. The association may commence business whenever 20 per cent of the authorized capital stock has been subscribed and paid in and the amount of the capital stock outstanding shall at no time be diminished below 20 per cent of the amount of the authorized capital. No shares shall be issued for less than its par value nor until the same has been paid for in cash or its equivalent.

Any co-operative association organized under this act may acquire and hold stock in any other corporation organized under any law of this state or any other state of the United States, the purpose of which may be a federation of co-operative associations or for the purpose of forming a district, state or national marketing, sales or service agency or for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states. A stockholder in any co-operative association organized under this act shall not be entitled to more than one vote which shall be in person, or by mail as hereinafter provided, and not by proxy, except that any such co-operative association that is a stockholder in any other corporation shall have the power and authority by its board of directors or by its stockholders to elect or appoint any person or persons to represent it at any meeting

of the stockholders of any corporation in which it owns stock and the person or persons so elected or appointed shall have full power and authority to represent such co-operative associations and also to cast its vote or votes at any such meeting.

Provided, however, that in cooperative associations wholly or partially constituted of other co-operative associations organized under this act or under the laws of this or any other state, each affiliated member co-operative shall have an additional vote for a certain stipulated volume of business done by it with its central organization or a certain stipulated number of members in such associations, to be determined in either or both cases by the articles and by-laws of the central association.

Provided further, that any such co-operative central association organized under this act or under the laws of this or any other state having at any time more than 3,000 individual members or stockholders may group such members or stockholders in local units or territorial or other basis as may be determined by the articles and by-laws of the central association.

The grouping of such members or stockholders shall be determined by the directors of the central association at their first meeting immediately following the adoption of such provision in the articles and by-laws of the central association.

Each of said units shall be entitled to be represented at any and all stockholders' meetings of the central association by a delegate or delegates of their own choosing and such delegates shall exercise the same powers at such stockholders' meetings as any shareholder of the central association may exercise on such basis of voting rights as is provided for in the articles and by-laws of the central association pertaining to such shareholders.

The directors of the central association shall have the power to do all things necessary to give full force and effect to this section including the power to fix the time and place and rules of conduct for the holding of meetings by such units for the purpose of their electing a delegate or delegates to all stockholders' meetings of the central association.

Stock in any co-operative association organized under this act shall be sold or transferred only with the consent and approval of the board of directors and the by-laws of such co-operative association shall provide that it shall have the first privilege of purchasing stock offered for sale by any stockholder. Any stock so acquired by the board of directors for such co-operative association may be held as treasury stock or may be retired and cancelled. Any stockholder who knowingly, intentionally or repeatedly violates a provision of the by-laws adopted by any co-operative association organized under this act may be required by the board of directors of the co-operative association to forfeit his stock, in which case the association shall refund to the stockholder the par value of his stock or in case the book value of such stock shall be greater or lesser than the par value, the stockholder shall be paid the amount of the book value of the stock. Stock so forfeited shall be retired and cancelled by the board of directors and such stockholders shall thereafter have no rights, privileges or benefits in such co-operative association.

Any stockholder who is absent from any meeting of the stockholders of any association organized under the provisions of this act, may, as herein provided but not otherwise, vote by mail on the ballot herein prescribed, upon any motion, resolution or amendment to be acted upon at such meeting. Such ballot may be in the form prescribed by the board of directors of such association and shall contain the exact text of the proposed motion, resolution or amendment to be acted upon at such meeting and the date of the meeting; and shall also contain spaces opposite the text of such motion, resolution or amendment in which such stockholder may indicate his affirmative or negative vote thereon. Such stockholder shall express his

choice by marking an "X" in the appropriate space upon such ballot. Such ballot shall be certified to and signed by the stockholder if an individual, or if a corporation by the president or secretary thereof, and when received by the secretary of the association holding the meeting, shall be accepted and counted as the vote of such absent stockholder at such meeting. (As amended Apr. 1, 1941, c. 114, §3.)

Board may refuse to approve sale and transfer of stock, and if by-laws restrict membership to producers of agricultural products, that controls. Op. Atty. Gen. (93A-11), Feb. 28, 1941.

7839. Directors—Election of, etc.

It is mandatory that articles provide for a vice-president. Op. Atty. Gen. (93a-28), June 26, 1940.

7840. Earnings—Reserve fund—Distribution.—An association organized under this act may set aside such part of its net income during its first two fiscal years as its board of directors deems advisable, for the purpose of creating a reserve for permanent surplus, and annually thereafter its board of directors shall set aside for the purpose of such reserve at least ten per cent of the annual net income until the reserve for permanent surplus shall equal 50 per cent of the paid-up capital, and thereafter the reserve for permanent surplus may be increased from time to time by the board of directors of the association to such an amount as it deems advisable. In addition to such reserve for permanent surplus the directors of any such association may set aside a sum not to exceed five per cent of the annual net income of the association, which shall be used for the purposes of promoting and encouraging co-operative organization, and may establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes. Net income in excess of dividends on capital stock and additions to reserve and surplus shall be distributed on the basis of patronage. The stockholders may provide in the by-laws of the association that non-member patrons shall participate in the distribution of net income upon equal terms with member patrons. If the patron is qualified and eligible for membership, the amount of patronage refund due him shall be credited to his individual account, and when such credits shall equal the value of a share of common stock or a membership a share of common stock or a membership shall be issued to him. If the patron is not qualified or eligible for membership, the refund due him may be credited to his individual account, and when such credits shall equal the value of a share of preferred stock or a certificate of interest a share of preferred stock or a certificate of interest may be issued to him, and thereafter such patron may participate in the distribution of income upon the same basis as a common stockholder or member.

Distribution of net income shall be made annually or oftener, provided, however, that net income of a co-operative association arising from trucking operations shall be distributed only annually. The directors of such associations shall present to the stockholders at their annual meeting a report covering the operations of the association during the preceding fiscal year.

Dividends may be paid on capital stock only when the net income of the association for the previous fiscal year is sufficient and shall not be cumulative. (As amended Apr. 1, 1941, c. 114, §4.)

In a proper case state may participate in cooperative oil association. Op. Atty. Gen., (93a-22), May 28, 1940.

7843. Associations heretofore organized.—Any co-operative corporation or association heretofore organized and doing business under prior statutes of this state, or under the laws of other states, or which has conducted its business upon the co-operative plan, which retains the same corporate name or title, may come under the provisions of this act and be bound thereby upon amending its articles of incorporation to conform to the requirements of this act in the manner hereinafter provided for the adoption of

amendments. Co-operative associations organized under the laws of other states shall be required to amend their articles of incorporation, in the manner required by the laws of the state in which such association was incorporated, so as to comply with the provisions of this act, whereupon it shall be entitled to file a certified copy of its articles of incorporation and amendments thereto with the secretary of state, subject to the fees and requirements prescribed by this act, and such association shall henceforth be considered as a co-operative association in this state and subject to the provisions of this act. Provided, that any co-operative association originally organized under the laws of another state, which has heretofore complied with the provisions of Section 11 of said original act, and has received a certificate of incorporation from the secretary of state of Minnesota, shall be, and it hereby is declared to be a de jure corporation under the provisions of this act without any further act by it or any officer of this state, and all acts of any such corporation heretofore had or taken as a Minnesota corporation are hereby in all things validated and confirmed.

Voluntary proceedings for dissolution of any association organized under or subject to the provisions of this act or any other law of Minnesota relating to the organization of co-operative associations may be instituted whenever a resolution therefor is adopted by two-thirds of the voting power voting thereon at a meeting duly called for that purpose. The resolution may provide that the affairs of the association shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of trustee; but such appointment shall not be operative until a certificate setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice president and by the secretary or assistant secretary shall be filed for record with the secretary of state. If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by a majority of the voting power represented at a meeting of stockholders or members. The meeting may be called by the remaining trustee or trustees, if any, and if none, then by any stockholder or member. Unless the resolution to dissolve otherwise provides, the trustee or trustees may be removed with or without cause by the vote of a majority of the voting power at a meeting called for that purpose. The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or stockholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court. Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court, and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court.

Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the stockholders or members to conduct the winding up out of court shall, as speedily as practicable after his or their appointment has become operative as hereinabove provided, proceed to collect all sums due or owing to the corporation; to sell and convert into cash all corporate assets; to collect any amounts remaining unpaid on subscriptions to shares, and to pay all debts and liabilities of the association according to their respective priorities. Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the stockholders, members, or patrons of the association. Stockholders shall first be paid the par value of their shares, and the remainder

of such property shall be distributed among patrons, members and common stockholders in accordance with their interest in the reserves and surplus as shown by the records of the association. (As amended Apr. 1, 1941, c. 114, §5.)

In view of laws 1939, c. 14, a rural telephone company organized in 1911, for a period of 20 years may extend its period of corporate existence if it acts prior to February 14, 1940, but it must comply with sections 7843 and 7844. Op. Atty. Gen., (93a-8), Dec. 19, 1939.

7844. Amending articles of incorporation.—The articles of incorporation of any association organized under this act or which may elect to come under the provisions of this act may be amended in the following manner: The board of directors, by majority vote of its members may pass a resolution setting forth the full text of the proposed amendment. Upon such action by the board of directors, notice shall be mailed to each and every stockholder containing the full text of the proposed amendment. Such notice shall also designate the time and place of the meeting at which such proposed amendment shall be considered and voted upon, in the same manner as elsewhere provided in this act. An association having in excess of 200 stockholders or members may publish such notice in two successive issues of a legal newspaper of general circulation in the area served by such association in lieu of notice by mail. If a quorum of the stockholders is registered as being present or represented by mail vote at such meeting a majority of the members so present or represented by mail vote, may adopt or reject such proposed amendment. After an amendment has been adopted by the stockholders, articles of amendment setting forth the amendment and the manner of adoption thereof shall be signed and acknowledged by the president or vice president and by the secretary or assistant secretary, and filed in the office of the secretary of state and recorded in the office of the register of deeds of the county of its principal place of business.

(1) Articles of incorporation and of amendment shall be approved by the attorney general before the same are filed in the office of the secretary of state. (As amended Apr. 1, 1941, c. 114, §6.)

Where special meeting was called to amend articles of incorporation by proper mailing and advertising, but a quorum was not present, changes may not be taken up at following annual meeting without going through process of advertising again. Op. Atty. Gen., (93a-2), Oct. 20, 1939.

7846. Laws repealed.

A cooperative organized under G. S. 1913, §6479 et seq. which has been repealed, may not renew its corporate life under the repealed act. Op. Atty. Gen., (93a-8), Sept. 26, 1939.

7847-1 and 7847-2. [Repealed.]

Repealed. Laws 1941, c. 114, §7.

7859-11. Renewal of corporate existence, etc.

A rural telephone company organized in 1911 for a period of 20 years may extend its period of corporate existence if it acts prior to February 14, 1940. Op. Atty. Gen., (93a-8), Dec. 19, 1939.

A rural telephone corporation organized as a cooperative under a law which has not been repealed may extend period of corporate existence under Laws 1939, chapter 14. Op. Atty. Gen. (93a-8), Jan. 17, 1940.

AGRICULTURAL SOCIETIES

STATE AGRICULTURAL SOCIETY

7860. Confirmation—Purposes.

State Agricultural Society is a department of the state and thereby entitled to all privileges, immunities and obligations of a state agency. Op. Atty. Gen. (4), Jan. 7, 1941.

7861. Membership in state agricultural society.

A county agricultural society in order to be eligible to be a member in state agricultural society must maintain an active existence and hold annual fairs and comply with all instructions and orders of public examiner regarding methods of keeping accounts and be eligible for state aid. Op. Atty. Gen., (4), May 20, 1940.

7878. May contract in its own name.

This section authorizes temporary borrowing of money in connection with functions of society in its operation of affairs, in order to meet current obligations, but so-

cety does not have authority to pledge credit of state nor pledge nor encumber any of its property, or to be sued. Op. Atty. Gen. (4), Aug. 31, 1940.

COUNTY AGRICULTURAL SOCIETIES

7885. County agricultural societies—Formation—General powers.

Renewal of period of corporate existence of certain county agricultural societies whose period of duration has expired, and validation of acts thereof. Laws 1941, c. 147.

Laws 1937, c. 352, amending this section, did not repeal Laws 1923, c. 146, amending this section, and a new corporation should contain in its articles provisions set forth in Laws 1923, c. 146. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

A county agricultural society may have membership only without issuance of capital stock. Id.

A county agricultural society organized under this section may take advantage of Laws 1939, c. 294, if it can satisfy the requisites of that act. Id.

A county agricultural society may be dissolved only upon affirmative vote of majority of voting stock or members. Id.

Section 7455 is the only statute under which a county agricultural society may renew its corporate life. Id.

Laws 1923, chapter 146, is a complete incorporation act in itself, and county agricultural societies should be organized under that act. Op. Atty. Gen. (772a-5), Jan. 15, 1940.

Site of fair of County Agricultural Association may not be changed without amendment of articles. Op. Atty. Gen. (772a-5), March 8, 1940.

Articles of incorporation of a county agricultural association should contain provisions set out by Laws 1923, chapter 146, which was not repealed by Laws 1923, chapter 232. Id.

County Agricultural Associations may be formed under this section and its articles of incorporation may be amended under §7472. Id.

Jurisdiction of society over fair grounds is not exclusive, and sheriff, or any other duly authorized peace officer, has same rights and duties to see that law is obeyed on fair grounds as in any other instance, and it is advisable that fair board work in conjunction with sheriff and county attorney. Op. Atty. Gen. (772c-4), July 15, 1940.

7886. Aid to county agricultural societies.

Act Apr. 28, 1941, c. 521, §6, provides that any association or society enumerated in section 7886, may suspend the holding of its annual fair for one year, and upon resumption of the holding of such annual fair shall be entitled to its pro rata distributive share as provided in said section.

County board may not make an appropriation to a village fair which is not a member of state agricultural society. Op. Atty. Gen., (125B-10), May 14, 1940.

7889. Appropriations by certain municipalities.

Charter cities of Fergus Falls and Waseca may make appropriations to agricultural society. Op. Atty. Gen., (59a-3), April 30, 1940.

It is question of fact for village council to determine whether or not a fair held 8 miles from its limits is in "close proximity." Op. Atty. Gen. (476B-5), Feb. 6, 1941.

7891-1. Incorporation of County Agricultural Society—Appropriations.

A county agricultural society organized under §7885 or §7892 may take advantage of this act if it can satisfy requisites thereof. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

SOCIAL AND CHARITABLE CORPORATIONS

GENERAL PROVISIONS

7892. Enlarging powers of social and charitable corporations.

Laws 1941, c. 104, authorizes the renewal of corporate existence of any social or charitable corporation organized under Mason's Minnesota Statutes of 1927, §§7892 or 7901, or fraternal corporation, whose period of duration has expired less than 21 years prior to passage of such act.

Op. Atty. Gen. (772a-5), Jan. 15, 1940; note under §7885. Bar association organized as a social and charitable corporation is doing business within state within meaning of corrupt practices act, and cannot contribute money, property or services to any political party, organization, committee or individual for political purposes, but expenditures to defray expense of a plebiscite and furnishing services of officers in managing the same in connection with election of judicial officers does not constitute contribution of money or services. La Belle v. H., 288 NW788. See Dun. Dig. 2994.

Scholarship and loan fund organization, non-profit, may properly be organized under social and charitable laws. Op. Atty. Gen., (102), Nov. 3, 1939.

A county agricultural society may be formed under this section, in which case articles should contain matter required to be stated by §7893. Op. Atty. Gen., (772a-5), Dec. 19, 1939.

Constitutional exemption of public hospitals from taxation applies to moneys and credits. Op. Atty. Gen. (614G), Nov. 28, 1940.

7893. Certificate—Contents—Filing, etc.

Op. Atty. Gen. (772a-5), Jan. 15, 1940; note under §7885.

7899. Colleges and seminaries—Diplomas. [Repealed.]

Repealed. Laws 1941, c. 169, except as therein provided. Reenacted as 3156-1(25).

Commissioner of education in making annual report to the legislature should include at least a summary statement of information contained in reports from private incorporated colleges. Op. Atty. Gen. (160h), Aug. 16, 1940.

NON-PROFIT HOSPITAL SERVICE PLAN CORPORATIONS

7900a. Non-profit hospital service plan corporations—Laws governing.—Any corporation organized under the laws of this state, on a strictly non-profit basis, for the purpose of establishing and operating a non-profit hospital service plan whereby hospital service is provided by hospitals with which such corporation has a contract, to persons who become subscribers to said plan under a contract with such corporation for such hospital service shall be subject to, and governed by the provisions of this act and shall not be subject to the laws of this state relating to insurance, and insurance companies, except as hereinafter specifically provided. (Act Mar. 10, 1941, c. 53, §1.)

7900b. Same—Subscribers—Emergency service.—The hospital service plan operated by such corporation, may also provide for hospital service to such subscribers in other than contracting hospitals, in case of emergency or expediency, and subject to the approval of the governing body of such hospital service plan corporation. (Act Mar. 10, 1941, c. 53, §2.)

7900c. Same—Certificate of incorporation—Filing.—A copy of the certificate of incorporation of all such non-profit hospital service plan corporations, and all amendments, shall be filed with the commissioner of insurance of the state of Minnesota, at the time the originals are filed with the secretary of state, provided, however, that any hospital service plan corporation that has heretofore incorporated under the social and charitable laws of the State of Minnesota, and is now operating such a non-profit hospital service plan in this state, shall forthwith file a copy of the certificate of incorporation, and all amendments thereto, with the commissioner of insurance, and thereupon be subject to the provisions of this act. (Act Mar. 10, 1941, c. 53, §3.)

7900d. Same—Governing body of contracting hospitals—Members.—A majority of the governing body of every such non-profit hospital service plan corporation shall, at all times, be administrators or members of the governing body of hospitals which have agreed with such non-profit hospital service plan corporation to furnish hospital service to the subscribers to such non-profit hospital service plan.

Every such contracting hospital shall be represented in every such non-profit hospital service plan corporation with which it has entered into an agreement to furnish such hospital service to subscribers thereto, provided, however, that any two or more such contracting hospitals may have the same representative therein. (Act Mar. 10, 1941, c. 53, §4.)

7900e. Same—Statement of financial condition—Filing.—Every such corporation shall annually, on or before the last day of March, file with the commissioner of insurance, a statement verified by not less than two of its principal officers, showing the financial condition of such corporation as of the 31st day of December next preceding. (Act Mar. 10, 1941, c. 53, §5.)

7900f. Same—Access to books and records—Examination of officers and employees—Expenses.—The commissioner of insurance, or any deputy or examiner

designated by him, shall have the right, at all reasonable times, to free access to all books and records of such corporation, and may summon and examine, under oath, the officers and employees of such corporation in all matters pertaining to its financial condition. The expense of any such examination of its books and financial condition shall be borne by such corporation. (Act Mar. 10, 1941, c. 53, §6.)

7900g. Same—Investment of funds.—The funds of any corporation subject to the provisions of this act shall be invested only in those securities and property designated by the laws of this state for the investment of the capital, surplus and other funds of domestic life insurance companies. (Act Mar. 10, 1941, c. 53, §7.)

7900h. Same—Practice of healing or medicine.—Nothing herein shall authorize any person, association, or corporation to engage, in any manner, in the practice of healing, or the practice of medicine, as defined by law. (Act Mar. 10, 1941, c. 53, §8.)

CORPORATIONS TO ADMINISTER CHARITIES

7901. Formation—Requisites.

Act Mar. 28, 1941, c. 104, authorizes renewal of corporate existence.

CHAMBER OF COMMERCE, ETC.

7903. Corporations may be formed for certain purposes.

A chamber of commerce does not have a perpetual corporate existence. Op. Atty. Gen. (92a-9), Nov. 9, 1940.

LODGES, FRATERNAL ORDERS, ETC.

7951. Fraternal order of Eagles—Power to incorporate.

A fraternal organization employing and paying physician to care for members cannot interfere by injunction with any proceedings that may be brought by board of medical examiners to revoke license of physician for unprofessional conduct in being employed by a corporation. *Fisch v. S.*, 292NW758. See Dun. Dig. 7483.

RELIGIOUS CORPORATIONS

7963-1. Certain religious corporations validated.

—Any religious corporation organized pursuant to the provisions of Mason's Minnesota Statutes of 1927, Section 7963, and any religious corporation which has complied with the provisions thereof except in respect to the objections hereinafter set forth, is hereby legalized and validated as against the following objections:

(1) That no notice was given or posted and no definite time set for the meeting of the worshippers;

(2) That no record was kept of the meeting of the worshippers and no record exists to show how the meeting was conducted or who was elected chairman or secretary thereof; that the chairman and the secretary, whether elected at such meeting or otherwise, did not sign the certificate in the presence of witnesses or did not acknowledge the certificate; that the certificate signed by the chairman and secretary of such corporation and acknowledged by them was not filed in the office of the register of deeds;

(3) That the certificate together with a certificate of acknowledgment and a copy of the notice of the meeting of worshippers and affidavit of posting the same, were not recorded in the office of the register of deeds. (Act Apr. 10, 1941, c. 180, §1.)

Act Apr. 10, 1941, c. 180, §2 provides that this act shall not apply to corporation whose charter has been forfeited by the court, nor affect any corporation in regard to which an action is pending.

7964. Powers of certain corporations.

In proceeding against church for permission to disinter a body, defendant had a sufficient adverse interest so that it should have been served with a summons instead of a notice. *Uram v. S.*, 292NW200. See Dun. Dig. 89.

7965. Certificate to be recorded; etc.

Articles of incorporation in the Norwegian language cannot be recorded. Op. Atty. Gen. (373B-17(d)), Dec. 18, 1940.

MINNESOTA HISTORICAL SOCIETY

8008-1. Custodianship of records, etc., by Minnesota Historical Society—Authority to destroy—Copies as evidence.—The Minnesota Historical Society is hereby authorized to receive and is made the custodian of such records, files, documents, books, and papers as may be turned over to it from any of the public offices of the state, including state, county, city, village, and township offices. The Minnesota Historical Society is hereby authorized to destroy all such records, documents, and papers, which it deems to be without legal or administrative value or historical interest, provided, however, that no public document less than six years old shall be destroyed. An accurate descriptive list of the records so disposed of and a record of the disposal itself shall be filed and preserved by the Minnesota Historical Society and by the department or agency in which the records originated. It shall provide for the classification, arranging, and indexing of all public records which it deems to be of sufficient value and interest to preserve, so that they may be made available for the use of the public. Copies and photographic reproductions of all such papers, documents, files, and records, including reproduction of records, the originals of which have been destroyed, when certified under oath as true copies by the superintendent of the said society, shall be admitted as evidence in all courts, with the same effect as if certified to by the original custodian thereof. (As amended Act Apr. 28, 1941, c. 553, §5.)

8008-2. Same—Records, etc., how transferred to society.—Any public official is hereby authorized, upon the conditions hereinafter provided, to turn over to the said society, such records, files, documents, books and papers in his custody as are not in current use; provided, however, that said society shall present to such official a petition or application in which such records, files, documents, books, or papers shall be described in terms sufficient to identify the same, and which said petition shall be approved by the Governor, in case of the state officer, the board of county commissioners, in case of a county officer, and by the governing body of any city, village or town in case of a city, village or town officer, and which said application shall be filed in the office from which said records, files, documents, books, or papers have been turned over to said society; provided, also, that this act shall not repeal or annul the provisions of Section 145 of Mason's Minnesota Statutes 1927. (As amended Act Apr. 28, 1941, c. 553, §6.)

ACTIONS RESPECTING CORPORATIONS

8013. Sequestration—Receiver—Distribution.

9. General nature of action.

General rule is that right and title vest in receiver in corporate sequestration as of time of his appointment. *State v. District Court*, 287NW491. See Dun. Dig. 2157 (78).

8020. Insolvent banks and insurance companies.

Section 9311, requiring written findings of fact and conclusions of law separately stated, applies in hearing of a contested claim against an insolvent corporation in receivership proceedings for dissolution. *Fredsall v. M.*, 289NW780. See Dun. Dig. 2141.

8025. Enforcement of stockholders' liability.

First State Bank of Correll, 288NW709; note under §8028.

8026. Hearing upon petition.

First State Bank of Correll, 288NW709; note under §8028.

8027. Enforcement of stockholder's liability—Hearing—Order.

First State Bank of Correll, 288NW709; note under §8028.

8028. Action for assessments.

While scope and purpose of §8026 is limited to provisions thereof and as such is conclusive only as "to the amount, propriety, and necessity" of the assessment, in view of §8027, yet where it conclusively appears that enforcement is impossible of attainment of anything beneficial to corporation's creditors, court was justified

in sustaining defendant's contention that statute of limitations was applicable in proceeding to have court order an assessment. *First State Bank of Correll*, 238 NW709. See Dun. Dig. 802.

Statute of limitations starts running against stockholders' constitutional liability from date corporation goes into hands of a receiver. *Id.* See Dun. Dig. 802.

Appointment of a receiver is a sufficient judicial declaration of insolvency, and order of assessment is not

necessary to start statute running. *Id.* See Dun. Dig. 802.

Statute of limitations was properly in case where plaintiff had been permitted to amend his complaint by striking from it allegation showing running of statute against his cause and defendant was thereupon given right to amend his answer by pleading statute. *Id.* See Dun. Dig. 5661, 7498a(38).